

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Josue Alusma)
4301 Rose Ave., # B)
Naples, Florida)

File Number EB-02-TP-260
NAL/Acct.No. 200232700022
FRN No.0007495997

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 6, 2002

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find that Josue Alusma, willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating a radio station without Commission authorization. We find Josue Alusma apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On April 20, 2002, in connection with an investigation of unlicensed FM broadcast stations in Naples, Florida, agents from the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) observed FM radio broadcasts on the frequency 100.5 MHz. Commission records showed no authorization for this operation in Naples, Florida. Using electronic direction finding techniques, the agents positively identified the source of the transmissions to be an antenna mounted on a tower attached to the back of an automobile repair shop building at 3639 Bayshore Dr., Naples, Florida. Based on field strength measurements taken by the agents of the station’s signal, this station required a license to operate.

3. Immediately thereafter, still on April 20, 2002, the agents interviewed the lessee of the entire property who stated that part of the second floor was sub-leased to another person. In a subsequent interview, the lessee provided the identity of the sub-lessee as Josue Alusma and Mireille Alusma of Naples, Florida, and also identified Josue Alusma as the sub-lessee based on a comparison with the picture on a copy of Josue Alusma’s driver’s license. The agents then went to the second floor space that was sub-leased to Mr. Alusma to attempt an inspection of the radio station. The agents saw a man leaving the vicinity of the subleased space whom they later identified to be Josue Alusma based on a comparison with the picture on a copy of Josue Alusma’s driver’s license. Several people were on the second floor and one of them approached the Commission agents to answer their questions. The agents inspected the radio station located on the second floor in the sub-leased space and observed a radio transmitter, an RVR

¹ 47 U.S.C. § 301.

Model VJ1000, an exciter, RVR Model TEX20-NV, and other equipment associated with the station operation. The agents hand delivered a written warning to the person assisting with the inspection and to the lessee of the entire space warning them of the penalties for the operation of the unlicensed radio station and directing the operation to cease.

4. On May 14, 2002, Commission agents from the Tampa Office drove to the Naples area to determine whether the station on 100.5 MHz was still operating. Using electronic direction finding techniques, the agents determined that the station was broadcasting from an antenna mounted on a two-story commercial building consisting of several individually-owned suites, at 4995 Tamiami Trail East, Naples, Florida. Based on field strength measurements taken by the agents of the station's signal, this station required a license to operate. The agents traced the coaxial cable from the antenna down to Suite # 4995. The agents observed a man leaving the area whom they later identified as Josue Alusma based on a comparison with the picture on a copy of Josue Alusma's driver's license. No one was available in Suite # 4995 at the time. The agents located and interviewed the owner of Suite # 4995 who provided a copy of a lease identifying the lessee of Suite # 4995 as Josue Alusma.

III. DISCUSSION

5. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On April 20 and May 14, 2002, Josue Alusma operated radio transmitting equipment on the frequency 100.5 MHz without benefit of the required Commission authorization.

6. Based on the evidence before us, we find that on April 20 and May 14, 2002, Josue Alusma repeatedly² and willfully³ violated Section 301 of the Act by operating radio transmission apparatus without a license.

7. Pursuant to Section 1.80(b)(4) of the Commission's Rules, the base forfeiture amount for the violation(s) cited in this notice is \$10,000.⁴ Section 503(b)(2)(D) of the Act requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."⁵ Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

² Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503 (b)(2)(D).

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁷ Josue Alusma is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this *Notice of Apparent Liability*, Josue Alusma SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and NAL/Acct. No. referenced in the letterhead above.

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this *Notice of Apparent Liability* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁸ See 47 C.F.R. § 1.1914.

14. IT IS FURTHER ORDERED THAT a copy of this *Notice of Apparent Liability* shall be sent by regular mail and Certified Mail Return Receipt Requested to Josue Alusma at 4301 Rose Ave. # B, Naples, FL 34112 and an additional copy to 4995 Tamiami Trail East, Naples, FL 34113.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director, Tampa Office
Enforcement Bureau